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12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF RIVERSIDE**

14 RIVERSIDE SHERIFFS' ASSOCIATION,

15 Petitioner,

16 v.

17 COUNTY OF RIVERSIDE, a political
18 subdivision of the State of California,
19 CHAD BIANCO, Sheriff-Coroner, County
20 of Riverside, BOARD OF SUPERVISORS,
21 County of Riverside, and Does 1 through
22 10, inclusive,

23 Respondents.

Case No.:

**EX PARTE APPLICATION FOR
ALTERNATIVE WRIT OF MANDATE
AND REQUEST FOR STAY ORDER
BY PETITIONER RIVERSIDE
SHERIFFS' ASSOCIATION;
MEMORANDUM OF POINTS AND
AUTHORITIES, DECLARATION OF
MUNA BUSAILAH ESQ. AND
EXHIBITS THERETO IN SUPPORT
THEREOF; DECLARATION OF
ROBERT RABE ESQ RE. NOTICE OF
HEARING; PROOF OF SERVICE**

Date: January 18, 2019

Time: 8:30 a.m.

Dept: 04

FILED
Superior Court of California
County of Riverside

1/17/2019

A. Hernández

By Fax

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | PREFATORY | 6 |
| II. | SENATE BILL 1421 CHANGES THE EXISTING PRIVACY RIGHTS OF PEACE OFFICERS | 7 |
| III. | RETROACTIVE APPLICATION IS INAPPROPRIATE UNLESS IT IS UNLESS IT IS EXPRESSLY STATED IN SUCH LAW | 8 |
| IV. | SENATE BILL 1421 AMENDMENTS OPERATE PROSPECTIVELY ONLY AND CANNOT BE APPLIED RETROACTIVELY TO PEACE OFFICER PERSONNEL RECORDS ARISING OUT INCIDENTS OR CONDUCT PRIOR TO JANUARY 1, 2019. | 9 |
| V. | THIS COURT SHOULD ISSUE AN ALTERNATIVE WRIT OF MANDATE TO ENJOIN ANY RETROACTIVE APPLICATION OF SENATE BILL 1421 UNTIL THIS PETITION HAS BEEN ADJUDICATED..... | 13 |
| VI. | THIS COURT SHOULD ISSUE A STAY ORDER TO ENJOIN ANY RETROACTIVE APPLICATION OF SENATE BILL 1421 UNTIL THIS PETITION HAS BEEN ADJUDICATED | 14 |
| VI. | CONCLUSION | 17 |

TABLE OF AUTHORITIES

Cases

| | | |
|----|---|---------|
| 1 | <i>Aetna Casualty and surety Company v. Industrial Accident Commission</i> | |
| 2 | (1947) 30 Cal.2d 388 | 5, 6, 7 |
| 3 | <i>Arthur Andersen v. Superior Court</i> | |
| 4 | (1998) 67 Cal.app.4th 1481 | 5 |
| 5 | <i>Balen v. Peralta Junior College District</i> | |
| 6 | (1974) 11 Cal.3d 821 | 6 |
| 7 | <i>Bullard v. California State Automobile Assn.</i> | |
| 8 | (2005) 129 Cal.App.4th 211 | 8 |
| 9 | <i>City of Hemet v. Superior Court</i> | |
| 10 | (1995) 37 Cal.App.4th 1411 | 3, 4 |
| 11 | <i>City of San Diego v. Superior Court</i> | |
| 12 | (1981) 136 Cal.App.3d 236 | 6 |
| 13 | <i>Cohen v. Bd of Supervisors</i> | |
| 14 | (1985) 40 Cal.3d 277 | 11, 12 |
| 15 | <i>Cole v. Fair Oaks Fire Protection District</i> | |
| 16 | (1987) 43 Cal.3d 148 | 2 |
| 17 | <i>Commission on Peace Officer Standards & Training v. Superior Court</i> | |
| 18 | (2007) 42 Cal.4th 278 | 4 |
| 19 | <i>Continental Baking Co. v. Katz</i> | |
| 20 | (1986) 68 Cal.2d 512 | 11, 12 |
| 21 | <i>Copley Press, Inc. v. Superior Court</i> | |
| 22 | (2006) 39 Cal.4th 1272 | 3 |
| 23 | <i>Costa Mesa City Employees' Assn. v. City of Costa Mesa</i> | |
| 24 | (2012) 209 Cal.App.4th 298 | 12 |
| 25 | <i>Davis v. City of Sacramento</i> | |
| 26 | (1994) 24 Cal.App.4th 393 | 4 |
| 27 | <i>Delaney V. Superior Court</i> | |
| 28 | (1990) 50 Cal.3d 785 | 7 |
| | <i>Evangelatos v. Superior Court</i> | |
| | (1988) 44 Cal.3d 1188 | 2, 6 |
| | <i>Hackett v. Superior Court</i> | |
| | (1993) 13 Cal.App.4th 96 | 6 |
| | <i>Halbert 's Lumber, Inc. v. Lucky Stores, Inc.</i> | |
| | (1992) 6 Cal.App.4th 1233 | 6 |

| | | |
|----|---|---------|
| 1 | <i>Industrial Indemnity Co. v. Workers' Comp. Appeals Bd</i> | |
| | (1978) 85 Cal.App.3d 1028 | 6 |
| 2 | <i>J.A. Jones Construction Co. v. Superior Court</i> | |
| 3 | (1994) 27 Cal.App.4th 1568 | 8 |
| 4 | <i>Long Beach City Employees Assn. v. City of Long Beach</i> | |
| | (1986) 41 Cal.3d 937 | 10 |
| 5 | <i>Maria P. v. Riles</i> | |
| 6 | (1987) 43 Cal.3d 1281 | 12 |
| 7 | <i>Marken V. Santa Monica-Malibu Unified School District</i> | |
| | (2012) 202 Cal.App.4th 1250 | 9 |
| 8 | <i>Myers v. Philip Morris Companies, Inc.</i> | |
| 9 | (2002) 28 Cal. 4th 828 | 5,6,7,8 |
| 10 | <i>Novar Corp. v. Bureau of Collection & Investigative Services</i> | |
| | (1984) 160 Cal.App.3d 1 | 11 |
| 11 | <i>People ex rel. Younger v. County of El Dorado</i> | |
| 12 | (1971) 5 Cal.3d 480 | 9 |
| 13 | <i>People v. Mooc</i> | |
| | (2001) 26 Cal.4th 1216 | 3, 5 |
| 14 | <i>Pitchess v. Superior Court</i> | |
| 15 | (1974) 11 Cal.3d 531 | 3 |
| 16 | <i>Quintano v. Mercury Casualty Co.</i> | |
| | (1995) 11 Cal.4th 1049 | 7 |
| 17 | <i>Rosales v. City of Los Angeles</i> | |
| 18 | (2000) 82 Cal.App.4th 419 | 11 |
| 19 | <i>Save Oxnard Shores v. California Coastal Commission</i> | |
| | (1986) 179 Cal App 3d 140, 149 | 9 |
| 20 | <i>Startrack, Inc. v. County of Los Angeles</i> | |
| 21 | (1976) 65 Cal.App.3d 451 | 10 |
| 22 | <i>Transdyn/Cresci v. City and Co. of San Francisco</i> | |
| | (1999) 72 Cal.App.4th 746 | 9 |
| 23 | <i>United Railroads of San Francisco v. Superior Court</i> | |
| 24 | (1916) 172 Cal. 80, 87) | 11 |
| 25 | <i>Western Security Bank v. Superior Court</i> | |
| 26 | (1997) 15 Cal.4th 232 | 8 |
| 27 | | |
| 28 | | |

| | | |
|----|---|--------|
| 1 | Statutes | |
| 2 | <i>California Code of Civil Procedure</i> | |
| 3 | § 526(a)(1) to (3) | 11 |
| 4 | § 1085 | 8 |
| 5 | § 1087 | 2, 10 |
| 6 | <i>California Evidence Code</i> | |
| 7 | § 1043 | 1, 9 |
| 8 | § 1046 | 1, 9 |
| 9 | § 1047 | 9 |
| 10 | <i>California Government Code</i> | |
| 11 | § 3500 | 9 |
| 12 | § 6250 | 1 |
| 13 | § 6253 | 9 |
| 14 | <i>California Penal Code</i> | |
| 15 | § 832.7 | passim |
| 16 | § 832.8 | passim |

| | | |
|----|---|------|
| 17 | <u>California Constitutional Provisions</u> | |
| 18 | California Constitution, Article I, Section 3, Subdivision (b), Paragraph (1) | 1, 4 |
| 19 | California Constitution, Article I, Section 3, Subdivision (b), Paragraph (2) | 4 |
| 20 | California Constitution, Article I, Section 3, Subdivision (b), Paragraph (3) | 2, 5 |

**I.
PREFATORY**

The Petitioner Riverside Sheriffs' Association ("RSA") is seeking an Alternative Writ of Mandate to direct Respondents County of Riverside ("County"), Riverside Sheriff Chad Bianco, and their agents, employees and representatives, to refrain from retroactively enforcing, or taking any action toward retroactively enforcing, California Senate Bill 1421, enacted as Chapter 988 of the 2017-2018 Regular Session, but commonly known as "SB 1421". SB 1421 became effective on January 1, 2019, and amended the protections afforded to peace officer personnel records pursuant by California *Penal Code* Sections 832.7 and 832.8.

In addition to seeking an Alternative Writ of Mandate, Petitioner respectfully requests that this Court issue an immediate order enjoining Respondents from applying the provisions of SB 1421 to any peace officer personnel records generated prior to January 1, 2019.

As this Court is aware, Senate Bill 1421 eliminates the long-established confidentiality of specified peace officer and custodial officer personnel records. The bill mandates that certain peace officer personnel records maintained by public agencies are subject to disclosure and inspection pursuant to *Government Code* 6250, *et seq.*, known as the California Public Records Act ("CPRA").

To the shock and dismay of the Riverside Sheriffs' Association, Respondents unilaterally decided that SB 1421 applies to peace officer personnel records generated *prior to* January 1, 2019 (*see* Exhibit "C".) Respondents' interpretation of this newly-enacted law is clearly erroneous and will have seriously injurious effects upon members of the Riverside Sheriffs' Association. The law, as written, includes no such retroactivity provision; as such, the peace officer personnel records at issue must be deemed confidential and subject to disclosure *only* by Court order pursuant to California *Evidence Code* Sections 1043 and 1046. This privacy right was established by statute, affirmed by the California Supreme Court, acknowledged by the California Constitution, and reasonably relied upon by Petitioners.

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II.

**SENATE BILL 1421 CHANGES THE EXISTING PRIVACY
RIGHTS OF PEACE OFFICERS**

Existing California law identifies peace officer personnel records, and information obtained from those records, as confidential and exempt from disclosure absent compliance with the statutory *Pitchess* process.¹ (*Penal Code* § 832.7(a).) As currently defined, confidential peace officer "personnel records" include "any file maintained under that individual's name by his or her employing agency and containing records relating to", among other things, "[e]mployee advancement, appraisal, or discipline," and "[c]omplaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties." (*Penal Code* § 832.8(d), (e).) As such, these records have not been subject to disclosure per a CPRA request. (*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1430 ["[T]he protection of *Penal Code* Section 832.7 is illusory unless that statute is incorporated into CPRA..."].)

The California Supreme Court has recognized that the statutory privilege affords peace officers "a strong privacy interest in [their] personnel records." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1227; p. 1220 [A peace officer has a "legitimate expectation of privacy in his or her personnel records"]; *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1300. Maintaining the confidentiality of such information encourages public agencies to retain these records and encourages the cooperation and candor of peace officers during internal investigations. (*Davis v. City of Sacramento* (1994) 24 Cal.App.4th 393, 401, fn. 1; *City of Hemet*, supra, 37 Cal.App.4th at p. 1430.)

This privacy interest is expressly enumerated in the California Constitution, Article I, Section 3, which provides that legal authority which furthers the people's right of access to

¹ The "*Pitchess* process" refers to the statutory in-camera disclosure procedure for relevant personnel records during civil and criminal proceedings enacted in response to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. (Evid. Code §§ 1043, 1046, 1047.)

1 public records be "broadly construed," while authority that "limits" the right of access be
2 "narrowly construed." (Cal. Const., art. I, § 3, subd. (b), pars. (1), (2)) This mandate, however,
3 *specifically excludes provisions which protect peace officers' privacy interest in the*
4 *confidentiality of their personnel file information.* (Cal. Const., art. I, § 3, subd. (b), par. (3);
5 *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278,
6 288 ["The Constitution [] recognizes the right to privacy and specifically acknowledges the
7 statutory procedures that protect the privacy of peace officers"].)

8 SB 1421's amendments to *Penal Code* Sections 832.7 and 832.8 modify this existing
9 privacy right by identifying four particular categories of peace officer personnel file "records"²
10 as non-confidential and therefore subject to public disclosure through the California Public
11 Records Act ("CPRA"):

- 12 (1) Records relating to incidents involving the discharge of a firearm at a
13 person by a peace officer;
- 14 (2) Records relating to incidents involving use of force resulting in death
15 or great bodily injury;
- 16 (3) Records relating to sustained findings by a law enforcement agency or oversight
17 agency that a peace officer or custodial officer engaged in the
18 sexual assault involving a member of the public, and;
- 19 (4) Records relating to sustained findings by a law enforcement agency or "oversight
20 agency" of specified instances of dishonesty. (See Exhibit "A").

21 III.

22 RETROACTIVE APPLICATION IS INAPPROPRIATE UNLESS 23 IT IS EXPRESSLY STATED IN SUCH LAW

24 A statute is considered retroactive if it substantially changes the legal effect of past
25 events. (*Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 153.) It is well-settled law
26 that a newly-enacted statute does not operate retroactively unless such it contains an express

27 ²"Records" is defined very expansively to include essentially the entirety of an investigation file, including all
28 documents from a subsequent administrative appeal process and anything presented by an employer to a district attorney for
criminal investigation. Cal. Pen. Code § 832.7(b)(1)(C)(2).

1 retroactivity provision, or other sources make it "very clear" that the Legislature "must have
2 intended a retroactive application." (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188,
3 1209) SB 1421 does not contain an express retroactivity provision, and nothing in the legislative
4 history indicates that the Legislature intended that it be applied retroactively.

5 Due to the influx of CPRA requests Respondents may receive seeking peace officer
6 personnel records under SB 1421, a regularly-noticed hearing on a peremptory writ of mandate
7 could not provide timely relief to Petitioner's represented peace officers. As such, their statutory
8 and constitutional privacy rights are in imminent jeopardy. The issuance of an Alternative Writ
9 of Mandate is therefore necessary to *immediately enjoin* Respondents from unlawfully releasing
10 confidential peace officer information pursuant to their erroneous interpretation that SB 1421
11 allows for retroactivity. (*See Code of Civil Procedure* §1087)

12 IV.

13 **SENATE BILL 1421'S AMENDMENTS OPERATE PROSPECTIVELY ONLY AND**
14 **CANNOT BE APPLIED OR ENFORCED AS TO PEACE OFFICER PERSONNEL**
15 **RECORDS ARISING OUT OF INCIDENTS OR CONDUCT**
16 **PRIOR TO JANUARY 1, 2019**

17 As noted above and worth reiterating, "a retrospective law is one which affects rights,
18 obligations, acts, transactions and conditions which are performed or exist prior to the adoption
19 of the statute." (*Aetna Casualty & Surety Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d
20 388, 391.) "[E]very statute, which takes away or impairs vested rights acquired under existing
21 laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to
22 transactions or considerations already past, must be deemed retrospective." (*Myers v. Philip*
23 *Morris Companies, Inc.* (2002) 28 Cal. 4th 828, 839.) Statutes are not to be given a retrospective
24 operation unless it is clear that such was the legislative intent. (*Aetna Casualty*, 30 Cal.2d at 393)
25 SB 1421's amendments to remove the confidentiality of personnel records for conduct occurring
26 prior to its effective date would constitute a retroactive application of its provisions.

27 Prior to the effective operation of SB 1421's amendments, peace officers were afforded
28 the right to confidentiality in all of their personnel file information — a privacy right established
by statute, affirmed by this Court, and acknowledged by the Constitution. (Pen. Code § 832.7(a);

1 *Mooc*, supra, 26 Cal.4th at p. 1227; Cal. Const., art. I, § 3, subd. (b), par. (3).) This is an
2 informational *privilege held by the individual peace officer* — not merely a privilege allowing
3 a public agency to withhold the production of physical documents. The privacy right extends
4 beyond the actual "files" or "records" maintained by public agencies to encompass the
5 information contained in or obtained from those documents. (Pen. Code § 832.7(a) ["Peace
6 officer.. personnel records ... *or information obtained from these records*, are confidential..."],
7 emphasis added]) Cal. Const. art. I, § 3, subd. (b), par. (3) [Right to privacy acknowledged by
8 the Constitution includes the "statutory procedures governing discovery or disclosure of
9 information concerning the official performance or professional qualifications of a peace officer"
10 emphasis added]; *Hackett v. Superior Court* (1993) 13 Cal.App.4th 96, 98-99 ["[T]here is
11 *nothing* in the statutory scheme or its history suggesting a legislative intent to exclude from the
12 privilege[] information which happens to be obtainable elsewhere." Original emphasis]; *City of*
13 *San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 239 ["There would be no purpose to
14 protecting such information in the personnel records if it could be obtained by the simple
15 expedient of asking the officers for their disciplinary history orally"].)

16 Accordingly, disclosing records reflecting incidents or conduct occurring prior to
17 January 1, 2019 would constitute a retroactive application of SB 1421's amendments because it
18 would violate the right to privacy of that information *already acquired* under existing law.
19 (*Aetna Casualty & Surety Co.*, supra, 30 Cal.2d at p. 391 ["A retrospective law is one which
20 affects rights... [which] exist prior to the adoption of the statute"].)

21 SB 1421's amendments cannot be applied retroactively, however, because the
22 Legislature *did not intend* such an operation. "Application of a statute to destroy interests
23 which matured prior to its enactment is generally disfavored." (*Balen v. Peralta Junior College*
24 *District* (1974) 11 Cal.3d 821, 830.) Statutes are presumed to "operate prospectively only,"
25 because "the first rule of [statutory] construction [states] that legislation must be considered as
26 addressed to the *future, not to the past...*" (*Myers*, supra, 28 Cal.4th at p. 840, emphasis added)
27 "[A] retrospective operation will not be given to a statute which interferes with antecedent rights
28 ...unless such be '*the unequivocal and inflexible import of the terms, and the manifest intention*

1 of the legislature." (Id, emphasis added; also see *Evangelatos*, supra, 44 Cal.3d at p. 1209 ["[I]n
2 the absence of an express retroactivity provision, a statute will not be applied retroactively unless
3 it is very clear from extrinsic sources that the Legislature must have intended a retroactive
4 application"].) "Something more than a desirable social objective served by the legislation is []
5 required if we are to infer a legislative intent of retroactivity." (*Indus. Indem. Co. v. Workers'*
6 *Comp. Appeals Bd* (1978) 85 Cal.App.3d 1028, 1032.)

7 "First, a court should examine the actual language of the statute" to determine if a
8 retroactive intent exists because "it is the language of the statute itself that has successfully
9 braved the legislative gauntlet." (*Halbert 's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6
10 Cal.App.4th 1233, 1238. By its terms, Senate Bill 1421 contains no express statement of
11 retroactive application. The enactment contains no legislative findings directing a retroactive
12 application of the new law or asserting that SB 1421 is intended to "clarify" the existing
13 operation of Penal Code section 832.7.³ The language of SB 1421 is not ambiguous on this point.
14 (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 ["If the language is clear and
15 unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent
16 of the Legislature...1.) Had the Legislature intended SB 1421's amendments to apply
17 retroactively to rescind already acquired privacy rights it would have expressly stated as such.
18 (*Aetna Casualty & Surety Co.*, supra, 30 Cal.2d at p. 396 ["[I]t must be assumed that the
19 Legislature was acquainted with the settled rules of statutory interpretation, and that it would
20 have expressly provided for retrospective operation of the amendment if it had so intended"].)
21 Likewise, the relevant legislative history of SB 1421 contains no expression
22 of retroactive intent.

23 While the legislative history⁴ contains ambiguous references to SB 1421's "effect" as

24
25 ³ To the contrary, the legislative history repeatedly affirms that "existing law" deems all peace officer personnel file material
is confidential.

26 ⁴ The only mention of a potential retroactive application comes from a lobbying organization's *opposition* to the bill. (Senate
27 Com. on Public Safety Analysis of SB 1421 as amended April 2, 2018, p. 16 ["[Our] reading of Senate Bill 1421 is that making the records
28 of an officer's lawful and in policy conduct is retroactive in its impact"].) This is irrelevant, however, because it does not provide any

1 being to "open [1 police officer personnel records in very limited circumstances," such
2 language does not manifestly state an intent to unwind previously-acquired privacy rights for
3 incidents or conduct that has already occurred. (*Myers*, supra, 28 Cal.4th at p.840.) Rather, this
4 simply states an intent to prospectively open specified peace officer records of misconduct for
5 public disclosure occurring after SB 1421's operative date. Interpreting this stated "effect" any
6 other way would ignore the fact that peace officers had an informational privilege, not a
7 document production privilege, for the specified categories of incidents prior to January 1, 2019.
8 (*Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th 1481, 1500 ["The Legislature is
9 presumed to know existing law when it enacts a new statute..."] Either way, "the wisest course
10 is to rely on legislative history only when that history itself is unambiguous." (*J.A. Jones*
11 *Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1578.) And, "a statute that is
12 ambiguous with respect to retroactive application is construed ... to be unambiguously
13 prospective." (*Myers*, supra, 28 Cal.4th at p. 841, emphasis added.)

14 California courts comply with the legal principle that unless there is an "express
15 retroactivity provision, a statute *will not* be applied retroactively without a *clear and unavoidable*
16 *implication* that the Legislature intended retroactive application." (*Bullard v. California State*
17 *Automobile Assn.* (2005) 129 Cal.App.4th 211, 229, citing *Myers*, supra, 123 Cal.Rptr.2d 40,
18 emphasis added.) Under this formulation, a statute's retroactivity is, in the first instance, a policy
19 determination for the Legislature and one to which courts defer absent "some constitutional
20 objection" to retroactivity. (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244,
21 62 Cal.Rptr.2d 243, 933 P.2d 507.)

22 SB 1421 contains no "express language of retroactivity" and nothing in the relevant
23 legislative history indicates even an implied retroactive intent. SB 1421's amendments cannot
24 lawfully be applied to rescind previously-acquired privacy rights to the confidentiality of
25 information concerning incidents or conduct occurring prior to the statute's effective date.

27 insight into the Legislature's collective intent in enacting SB 1421 — lobbyists' letters "do not aid in [the] interpretation of the statute"
28 because they "merely state the individual opinions of their authors." (*Quintana v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1066,

1 Accordingly, Respondents' stated intent to so apply SB 1421's amendments retroactively is
2 unlawful.

3 V.

4 **THIS COURT SHOULD ISSUE AN ALTERNATIVE WRIT OF MANDATE TO**
5 **ENJOIN ANY RETROACTIVE APPLICATION OF SENATE BILL 1421 UNTIL**
6 **THIS PETITION HAS BEEN ADJUDICATED.**

7 Mandamus is proper to compel a public agency's performance of acts specifically
8 prescribed by law. (Code Civ. Proc. § 1085.) Issuance of a writ of mandate is dependent upon
9 two basic requirements: 1) a clear, present and ministerial duty on the part of the respondent;
10 and 2) a clear, present and beneficial right in the petitioner to the performance of that duty.
(*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491.)

11 A "ministerial duty" is one required to be performed "in a prescribed manner in obedience
12 to the mandate of legal authority and without regard to [] judgment or opinion concerning such
13 act's propriety or impropriety, when a given state of facts exists." (*Transdyn/Cresci v. City and*
14 *Co. of San Francisco* (1999) 72 Cal.App.4th 746, 752.) Respondent has a ministerial duty to
15 refrain from unlawfully releasing confidential information, properly enforced by mandamus.
16 (Code Civ. Proc. § 1085; *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202
17 Cal.App.4th 1250, 1266-1267 [Mandamus is appropriate to "prevent a public agency from acting
18 in an unlawful manner by releasing information the disclosure of which is prohibited by law"].)

19 SB 1421's amendments were effective on January 1, 2019. Respondents can reasonably
20 anticipate a significant increase in CPRA requests. Once such requests are received,
21 Respondents are obligated to respond within a very short statutory time-frame, leaving very little
22 time to challenge an agency's decision to release this information. (Gov. Code § 6253(c) ["Each
23 agency, upon a request for a copy of records, shall, within 10 days from receipt of the request,
24 determine whether the request, in whole or in part, seeks copies of disclosable public
25 records . . . "])

26 Respondents have advised the Petitioner that it intends to apply and enforce SB 1421
27 retroactively as to personnel records and information as to specified peace officer conduct
28

1 occurring prior to January 1, 2019. That information, however, is confidential as a matter of
2 law under Penal Code Sections 832.7-832.8 and not otherwise subject to disclosure, except by
3 discovery pursuant to Sections 1043 and 1046 of the Evidence Code.

4 Due to the expected increase in CPRA requests to Respondents effective January 1, 2019
5 seeking peace officer personnel records under SB 1421, a regularly noticed hearing on a
6 peremptory writ of mandate could not provide timely relief to Petitioner's represented peace
7 officers whose statutory and constitutional privacy rights are imminently jeopardized.

8 The issuance of an Alternative Writ of Mandate is necessary to immediately direct
9 Respondents to refrain from unlawfully releasing confidential peace officer information, or to
10 show cause why they have not done so. (*Code of Civil Procedure* §1087)

11 Courts will issue an alternative writ when the petition sufficiently alleges a cause of
12 action, which, if proven, could lead to the issuance of a final or peremptory writ. (*Save Oxnard*
13 *Shores v. California Coastal Commission* (1986) 179 Cal App 3d 140, 149.)

14 In this case, Respondents have a clear, present and ministerial duty not to retroactively
15 enforce SB 1421 in the absence of any express legislative direction for retroactivity in Senate
16 Bill 1421, and in contravention of the well-established presumption against retroactive
17 application of statutes in the absence of such a clearly declared intention by the legislature.
18 Furthermore, Petitioner's recognized employee organization has a clear, present and beneficial
19 interest on behalf of its represented peace officers to protect their right to privacy to confidential
20 personnel record information *already acquired* under existing law. (See *Long Beach City*
21 *Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 941, fn. 3 [employee organization
22 has standing to assert the privacy rights of its members].)

23 VI.

24 **THIS COURT SHOULD ISSUE A STAY ORDER TO ENJOIN ANY RETROACTIVE**
25 **APPLICATION OF SENATE BILL 1421 UNTIL THIS PETITION HAS BEEN**
26 **ADJUDICATED**

27 This court has the authority to immediately stay Respondent's planned release of
28 confidential peace officer personnel records pursuant to an unlawful application of Senate Bill

1 1421's amendments. In *Startrack, Inc., v. County of Los Angeles* (1976) 65 Cal.App.3d 451, 457,
2 the Court held that injunctive relief may be granted against illegal enforcement of valid
3 ordinances. Preliminary injunctive relief is appropriate to maintain the status quo pending a final
4 determination of the merits of the action, by restraining the commission of a threatened act in
5 violation of the petitioners rights or to prevent great of irreparable injury. (*Continental Baking*
6 *Co. v. Katz* (1968) 68 Cal.2d 512, 528). Status quo is defined as "the last actual peaceable,
7 uncontested status which preceded the pending controversy." (*United Railroads of San*
8 *Francisco v. Superior Court* (1916) 172 Cal. 80, 87)

9 Under California *Code of Civil Procedure* § 526(a)(1) to (3), injunctive relief may be
10 granted when it appears by the complaint or affidavits that the commission or continuance of
11 some act during the litigation would produce waste, or great of irreparable injury to a party to
12 the action. Issuance of a preliminary injunction depends on two interrelated factors: (1) the
13 likelihood that the plaintiff will succeed on the merits of his claim at trial, and (2) the harm that
14 plaintiff is likely to suffer if preliminary injunctive relief does not issue, balanced against the
15 harm that the defendant is likely to suffer if it does issue. (*Cohen v. Bd. of Supervisors* (1983)
16 40 Cal.3d 277, 286.)

17 As discussed in sections II and III above, Petitioner is likely to succeed on the merits of
18 this action. SB 1421's amendments do not operate retroactively to divest Petitioner's members
19 of their statutory privacy right to maintain the confidentiality of their personnel file information
20 reflecting conduct that occurred prior to January 1, 2019. As such, Respondents' stated intent to
21 apply the new law retroactively is unlawful.

22 Moreover, absent an immediate stay enjoining Respondents' retroactive application of
23 SB 1421's amendments, Petitioner's members will suffer irreparable harm that far outweighs
24 any detriment imposed on Respondents. (*Novar Corp. v. Bureau of Collection & Investigative*
25 *Services* (1984) 160 Cal.App.3d 1, 5 ["[I]t is well settled that where the enforcement of a statute
26 may cause irreparable injury, the injured party may seek to enjoin its enforcement"].

27 Respondents' unlawful application of SB 1421's amendments will cause substantial
28 irreparable harm to Petitioner's members. There is no adequate legal remedy to compensate

1 peace officers for the unlawful disclosure of their confidential personnel file information. The
2 damage caused by unlawful disclosure of confidential information is immediate — the *mere*
3 *disclosure* of that information to unauthorized individuals constitutes the harm suffered.
4 Once such information is in the public domain, there is no practical way to unwind that harm,
5 and certainly not by way of an action for money damages. Indeed, courts have held specifically
6 that the loss of privacy in peace officer personnel file information constitutes irreparable harm,
7 and separately that there is no action for damages available for such a violation. (*Rosales v. City*
8 *of Los Angeles* (2000) 82 Cal.App.4th 419, 427-428 ["violation of the statutory procedures for
9 disclosure of police personnel records does not give rise to a private right of action for
10 damages"].)

11 Respondent's intention to retroactively apply SB 1421's amendments must be enjoined
12 or stayed promptly. SB 1421's amendments went into effect on January 1, 2019.
13 As such, Petitioner is not required to wait for a CPRA request before seeking a stay or injunctive
14 relief to protect against violating its member's rights. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281,
15 1292 [threatened enforcement of state statute by school district sufficient for enjoining
16 implementation, citing *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, injunctive
17 relief filed to enjoin enforcement of city ordinance]; *Costa Mesa City Employees' Assn. v. City*
18 *of Costa Mesa* (2012) 209 Cal.App.4th 298, 305 [Petitioner "may seek injunctive relief against
19 the threatened infringement of their rights", original emphasis].)

20 In contrast, any harm that may occur by enjoining the Respondents from retroactively
21 applying the amendments is negligible. Because the identified categories of personnel file
22 information have been deemed confidential and exempt from public disclosure for well over 30
23 years, a temporary delay until the conclusion of these proceedings will have no measurable harm
24 on the Respondent or the public. Such inconvenience pales in comparison to the significant harm
25 to the peace officers whose confidential personnel records regarding conduct prior to January
26 1, 2019 will be subject to disclosure.

27 Accordingly, this Court should issue a Stay Order to enjoin any retroactive operation of
28 SB 1421 pending the hearing on the Alternative Writ of Mandate, and until this Court otherwise

1 directs. Petitioner is likely to succeed on the merits of this action. SB 1421's amendments do not
2 operate retroactively to divest Petitioner's members of their prior-acquired privacy right to
3 maintain the confidentiality of their personnel file information reflecting conduct that occurred
4 prior to January 1, 2019.

5 **VII.**

6 **CONCLUSION**

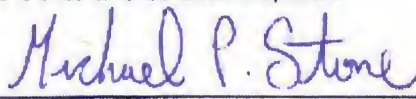
7 Respondents' stated intent to apply the new law retroactively is unlawful. Absent an
8 immediate stay enjoining Respondents' unlawful retroactive application of SB 1421's
9 amendments, Petitioner's members will suffer irreparable harm to their statutory and
10 constitutional privacy rights that far outweighs any detriment alleged by Respondents.

11 Petitioner Riverside Sheriffs' Association prays that this Court issue for an Alternative
12 Writ of Mandate and immediate Stay Order against any retroactive implementation of the
13 amendments of Senate Bill 1421 or otherwise enjoin Respondents County of Riverside and
14 Sheriff Chad Bianco from applying Senate Bill 1421's amendments retroactively, and grant the
15 relief sought by the Petitioner such that the peace officers of the Riverside Sheriffs' Association
16 maintain their right to the confidentiality of their personnel file regarding incidents or reflecting
17 conduct occurring prior to January 1, 2019.

18 Dated: January 17, 2019

STONE BUSAILAH, LLP

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20 By:



21 MICHAEL P. STONE ESQ.
22 Attorney for Petitioner
23 Riverside Sheriffs' Association
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